

DEC 02 2005Waters v. Jossie, No. 04-36082**CATHY A. CATTERSON, CLERK**
U.S. COURT OF APPEALS

GRABER, Circuit Judge, dissenting:

I respectfully dissent.

We may reverse a decision of the Interior Board of Land Appeals ("IBLA") only if it was arbitrary, capricious, not supported by substantial evidence, or contrary to law. Hjelvik v. Babbitt, 198 F.3d 1072, 1074 (9th Cir. 1999). With respect to the denial of a request to reconsider, we may reverse only for an abuse of discretion. Asarco, Inc. v. Occupational Safety & Health Admin., 746 F.2d 483, 501 (9th Cir. 1984). In my view, those standards are not met here.

As to the initial decision, the 25% labor overhead figure rested on evidence from the BLM's mineral expert. The IBLA permissibly held that the government had made its prima facie case and that the Waterses had failed to rebut it. Lara v. Sec'y of the Interior of the United States, 820 F.2d 1535, 1542 (9th Cir. 1987). As to the decision on reconsideration, the IBLA permissibly concluded that the Waterses had not demonstrated that the initial decision was wrong.